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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-882

LEONOR ALBERTI DE CANAS
and MIGUEL CANAS,

Petitioners,

v.

ANTHONY G. BICA
and JUAN SILVA,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

BRIEF OF PETITIONERS

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ON WRIT OF CERTIORARI TO THE COURT OF APPEAL TO THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the California Court of Appeal, Second Appellate District, is reported at 40 Cal.App. 3d 976, 115 Cal. Rptr. 444 (1974) and is reprinted in the Appendix to the Petition for Writ of Certiorari. (A. Pet.Cert. 1a-6a). The order of the Supreme Court of

California denying petitioners' petition for hearing is reprinted at A.Pet. Cert. 1b.

JURISDICTION

The judgment of the Court of Appeal was entered on July 26, 1974 (A.Pet.Cert. 1a-6a). A timely petition for hearing was denied by the Supreme Court of California on October 24, 1974 (A.Pet.Cert. 1b). A timely petition for writ of certiorari was filed with the Court on January 17, 1975, and was granted on June 23, 1975. The jurisdiction of this Court rests on 28 U.S.C. §1257(3).

QUESTIONS OF LAW PRESENTED

1. Is California Labor Code § 2805, enacted to protect California citizens and lawful resident aliens from unemployment caused by competition from illegal aliens, a legitimate exercise of California's police power?

2. Did the lower court fail to apply the principles announced by this Court in recent decisions by invalidating state legislation which touches on, but does not conflict with, federal law?

STATEMENT OF THE CASE

This litigation began when petitioners, migrant farmworkers, commenced an action pursuant to

California Labor Code § 2805[1] in the Superior Court for the County of Santa Barbara against respondents, farm labor contractors. The complaint alleged that petitioners had performed satisfactory employment for respondents as farmworkers from June 5, 1972 through September 28, 1972; that petitioners were lawful residents and lawful workers at all times; that on or about September 28, 1972, and at all times thereafter, respondents refused employment to petitioners on the ground that respondents had a surplus of labor; that part of said labor supply consisted of aliens illegally present in this country; that respondents are open and notorious employers of illegal aliens and encouraged illegal aliens to compete with local workers for jobs to depress local wages and working conditions; and that respondents' practices constituted the knowing employment of aliens not legally admitted to lawful residence in the United States which has an adverse effect on lawful resident workers in violation of California Labor Code § 2805(a) and (c). Petitioners sought their reinstatement to employment by respondents and a

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[1] California Labor Code § 2805 provides:

"(a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.

"(b) A person found guilty of violation of subdivision (a) is punishable by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00) for each offense.

"(c) The foregoing provisions shall not be bar to civil action against the employer based upon violation of subdivision (a)."

permanent injunction against respondents' willful employment of illegal aliens. (App. 3a).

Respondents answered petitioners' complaint by filing a demurrer which challenged the constitutionality of California Labor Code § 2805 on the ground that the statute is preempted by federal immigration law. (App. 15a). On February 14, 1973, the trial court declared California Labor Code § 2805 unconstitutional on preemption grounds and dismissed the complaint. (App. 16a). Petitioners' appealed the trial court's decision. The California Court of Appeal, Second Appellate District, affirmed (A.Pet.Cert. 1a-6a) and the Supreme Court of California denied petitioners' request for a hearing. (A.Pet.Cert. 1b). A petition for writ of certiorari seeking review from the Court of Appeal's decision was filed with this Court on January 17, 1975. On June 23, 1975, this Court granted certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. U.S. Const. Art. I § 8, cl.8.
2. U.S. Const. Art. I § 10, cl.1.
3. 7 U.S.C. § 2044b(6).
4. 7 U.S.C. § 2045(f).
5. 7 U.S.C. § 2051.
6. 8 U.S.C. § 1101(a)(15)(H).
7. 8 U.S.C. § 1182(a)(14).
8. 8 U.S.C. § 1324(a)(3).
9. 20 C.F.R. § 602.10(e)(1).
10. 20 C.F.R. § 602.10(e)(2).
11. 20 C.F.R. § 602.10(e)(3).
12. 20 C.F.R. § 602.10(e)(5).
13. California Labor § 2805.

INTRODUCTION

I.

BACKGROUND LEADING TO THE ENACTMENT OF CALIFORNIA LABOR CODE § 2805.

California's first attempt to diminish the impact of the seemingly unstemmable flow of illegal aliens was initiated by a number of Mexican-American farmworkers.[2] In 1968, they filed a lawsuit seeking to apply a state statute proscribing "unlawful or unfair business practices" in the illegal alien context. *Diaz v. Kay-Dix Ranch*, 9 Cal. App. 3d 588 (3rd Dist.) (1970). They contended that it was an "unfair business practice" for an employer to knowingly hire illegal aliens in preference to domestic labor. The Court comprehensively reviewed the extent and impact of illegal aliens on the employment opportunities of domestic labor. It concluded that "[t]he domestic farmworkers' need for protection against the job competition of illegal entrants is undeniable, the public benefits palpable." *Id.*, 596. In particularly strong language, the Court described the condition of the domestic farmworker:

> "Ever since the depression era of the thirties, the dismal plight of the American farmworker has been heavily annotated in an interminable flow of

[2] *See generally*, Note, *State Regulation of the Employment of Illegal Aliens: A Constitutional Approach*, 46 SO. CAL. L. REV. 565 (1973); Cardenas, *United States Immigration Policy Toward Mexico: A Historical Perspective*, 2 CHICANO L. REV. 66, 79-89 (1975).

> congressional hearings and reports, public surveys and social commentaries. . . . Despite decades of protest and officially expressed concern, there has been no solution to the dilemma posed by agriculture's heavy short-term need for manpower and society's inability to absorb that manpower when agriculture's need is past. From Steinbeck's Grapes of Wrath to the present, the thin gruel of public welfare handouts has been farm labor's principal progress to the goal of social justice." *Id.*, 596-97.

The Court then went on to describe how the general plight of the domestic farmworker was compounded by the influx of illegal aliens:

> "Capture of a sizeable share of the farm employment market by invading illegal entrants is a superimposed source of deprivation. The Immigration and Nationality Act. . . expresses a national policy to preserve the available employment market for domestic workers. Partial expropriation of the farm job market by illegal entrants represents an abject failure of national policy . . . [which] must be ascribed to the self-imposed impotence of our national government. . . ." *Id.*, 597.

In spite of the Court's appreciation of the problem, relief was denied. *Id.*, 599-600. Shortly thereafter, two other similar attempts were similarly unsuccessful. *Cobos v. Mello-dy Ranch*, 20 Cal. App. 3d 947 (1st Dist.) (1971); *Larez v. Oberti*, 23 Cal. App. 3rd 217 (5th Dist.) (1972).

Failing in the judicial forum, California's farmworkers went into the legislative arena and there succeeded. Recognizing the limitations of the federal system and the acute problems created by the presence of illegal

aliens in California, the State Legislature in 1971 attempted to partially ameliorate the problem by enacting Labor Code § 2805 which prohibits any employer from knowingly employing aliens not entitled to legal residence in the United States. Labor Code § 2805 is not limited to the farm labor context in recognition of the fact that illegal aliens exist in very substantial numbers in urban areas (see pp. 10-16, *infra)* as well thus also depressing the urban labor market.

In enacting the statute, California has sought to create both criminal and civil sanctions against employers who hire illegal aliens. California has a legitimate interest in protecting its fiscal interests and labor market by enacting legislation designed to prevent the use of labor by employers that, as Congress and others have recognized, depresses wages and the economy. Labor Code § 2805 focuses its regulatory prohibition directly at the source of the problem, namely the hiring practice of employers, a practice recognized to be injurious to the state's economic interests. California's geographic proximity to the Mexican border gives it an unusually strong interest and the federal government's apparent ineffective control of illegal entry by aliens makes the employment of illegal aliens a legitimate concern of the state.[3]

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[3]Other states have expressed similar concerns by enacting comparable legislation. *See*, Kan. S.A. Section 21-4409; Conn. Gen. Stats. Section 31-51k. However, the Connecticut statute appears to have been declared unconstitutional as a denial of equal protection to illegal aliens in *Marin v. Smith*, 376 F. Supp. 608, 609, n.2 (D. Conn. 1974); *see also, Nowzewski Polish Style Meat Products, Inc. v. Meskill*, 376 F. Supp. 610 (D. Conn. 1974). It appears that the decision is erroneous since it relied on

II.

GENERAL BACKGROUND OF THE SOCIAL AND ECONOMIC IMPACT OF ILLEGAL ALIENS ON THE UNITED STATES AND CALIFORNIA.

A. The United States

Summarizing the impact of persons illegally present throughout the country, the United States Department of Labor has observed that illegal aliens: (1) take jobs which normally would be filled by American citizens; (2) depress the wages and impair the working conditions of American citizens; (3) increase the burden of American taxpayers through added welfare costs; (4) reduce the effectiveness of employee organizations;[4] (5)

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equal protection decisions of this Court which hold that *lawfully* admitted aliens cannot be denied rights which are available to U.S. citizens. The Connecticut and California statutes distinguish between classes of aliens on an obviously rational basis: the legality of their entry into the country.

[4] A Congressional Committee has made this observation as well:

> Because the illegal aliens are themselves in violation of the law and risk deportation, or, in the case of illegal entry, criminal penalties, unscrupulous employers are able to exploit them without fear of being reported. According to the testimony, this exploitation takes a number of forms, including substandard wages and the denial of health protection, insurance, over-time, and other fringe benefits. The net effect is not only the displacement of American labor because of unfair competition, but, in the long run, a depression of wages and a lower standard of living where a supply of cheap alien labor is readily and dependably available. "Illegal Aliens," A Review of Hearings Conducted

secure jobs, services, and resources directly and indirectly from many federal and state programs, thus diverting scarce resources from American citizens; and (6) constitute for employers an unskilled group rich for exploitation[5] – aggressive, enterprising workers with low-wage demands.[6]

During the 92d Congress (Serial No. 13, pts. 1-5) by Subcommittee No. 1, Committee on the Judiciary, 93 Cong., 1st Sess. U.S. Government Printing Office, Washington: 1973, p. 12. (Hereinafter "Review")

See also, Briggs, *Mexican Migration and the U.S. Labor Market: A Mounting Issue For The Seventies* (Studies in Human Resource Development, No. 3; University of Texas, 1975) (hereafter, "Briggs"), p. 26, citing Samora, J., *Los Mojados: The Wetback Story* (Notre Dame, Indiana: Notre Dame Press, 1971), Chapter II.

[5] Illegal Mexican aliens have been used as strike breakers and in that capacity have made it incredibly difficult for farm laborers to unionize. ("Chavez Charges Scheme," *Washington Post,* September 23, 1974.) Cesar Chavez has also stated:

> "The illegal workers from Mexico are a severe problem. It is a problem that is out of control . . . we say, let them come in with their families, if the country needs them. Let them be legal. Then they will stand up to their rights." Richard Severo, "The Flight of the Wetbacks", *New York Times Magazine,* March 10, 1974, p. 84.

This Court's recognition that illegal aliens frustrate unionization, especially in such occupations as farm work is expressed in *U.S. v. Brignoni-Ponce,* ___ U.S. ___, 95 S. Ct. 2590 (1975). See also, Greene, *Immigration Law and Rural Poverty-The Problems of the Illegal Entrant,* 1969 DUKE L.J. 475, 488-89.

[6] *See,* remarks of Robert Brown, Associate Manpower Administrator, U.S. Training and Employment Services, Department of Labor, in Hearings on "Illegal Aliens" before Subcommittee No. 1, Committee on the Judiciary, 92d Cong., 1st Sess. (Serial No. 13, pts. 1-5), (1972), pt. 5, p. 1356, (Hereinafter "Hearings").

Additionally, the use of illegal alien labor is often accompanied by abusive and unfair labor practices. For example, illegal aliens who are apprehended usually leave the country under the "voluntary departure" procedure. The illegal entrant is advised of his right to a deportation hearing and if he waives the right, he will be returned to the country of his origin. Employers who make a practice of hiring illegal aliens are aware of these "voluntary departures" and rely on them to reduce payroll expenditures. When apprehended the employer usually denies that he owes the worker back wages. The employer knows that the worker will have "voluntarily departed" from the country within hours of apprehension and will be unable to pursue a wage claim.[7]

While it is difficult to obtain accurate data on illegal aliens,[8] the parameters of their impact can be described. Thus, the Immigration and Naturalization Service (hereinafter "INS") apprehended 788,145 illegal aliens in the United States during fiscal year 1974.[9] The Commissioner of INS, Leonard F. Chapman, Jr. put the estimate of the total number of illegal aliens in the United States, however, at at least 6 to 8 million

[7] *See,* Ortega, *Plight of the Mexican Wetback,* 58 A.B.A.J. 251, 252 (1972).

[8] *See,* e.g., the discussion of this problem in Vernon M. Briggs, Jr., *Illegal Immigration and the American Labor Force: The Use of "Soft" Data for Analysis,* The Conference on Measurement of Social and Economic Data and Public Policy, University of Texas, Austin, Texas, April 10-11, 1975.

[9] 1974 Annual Report: Immigration and Naturalization Service, p. 9 (hereinafter "INS: 1974 Annual Report").

persons and possibly as great as 10 or 12 million.[10] Of this number of illegal aliens in the country, INS projects that it will apprehend only one million in fiscal year 1975.[11]

While it has been suggested that illegal aliens earn $10 billion a year, an investigator of the INS stated that it is estimated that $10 billion in earnings is *sent out of the country* by illegal aliens and that at least $100 million in income taxes is evaded by these aliens.[12]

[10] *Id.* at p. iii. Former Attorney General William B. Saxbe stated that approximately 7 to 13 million illegal aliens are in the country. "Illegal Aliens Cost One Million Jobs: Saxbe," *Orlando Sentinal Star,* October 31, 1974, p. 6-A. *The Christian Science Monitor* estimates 7 million illegal aliens in the country while asserting that estimates range from between 3 million to as many as 12 million. "Jobs and Illegal Aliens," *Christian Science Monitor,*" March 20, 1975, p. 12.

[11] "Restrictions Aren't the Answer: The Illegals." *The New Republic,* February 22, 1975.

[12] "Illegal Aliens Earn $10 Billion A Year, Investigator Says," *New York Times,* Dec. 11, 1974. The same article suggests that the $10 billion is earned by roughly 6 million illegal aliens. Other estimates put the number of illegal aliens holding jobs at approximately 1 million. See, e.g., former Attorney General William Saxbe's statement in "Illegal Aliens Cost One Million Jobs: Saxbe," *Orlando Sentinel Star,* October 31, 1974, p. 6-A; statement of Leonard F. Chapman, Jr., Commission of INS, in "The Enterprising Border Jumpers," *Time,* May 19, 1975, pp. 14-15; *The Christian Science Monitor,* "Jobs and Illegal Aliens," March 20, 1975, p. 12.

See also, "False Identities Costly to Nation," *New York Times,* April 11, 1975, p. 7. The *Washington Star-News* stated that most illegals mail sums of largely untaxed money home to support their families. *Id.,* "Human Tide Cuts Deeply in America," Nov. 16, 1974, p. A-8.

The influx of illegal aliens is particularly acute in those states which have a common border with Mexico. One commentator has asserted that "the primary characteristic of the migration of Mexicans . . . is *not* legal migration, but rather it is illegal migration."[13] Thus, of the 788,145 illegal aliens arrested by INS in fiscal 1974, 709,959 or 90% were nationals of Mexico.[14]

INS has referred to the number of illegal entries across the southern border as a "virtual flood." (INS 1974 Annual Report, p. 9) and admits its inability to meet the situation:

> "Persons are illegally entering the country across our borders and through our ports of entry by the millions, far outstripping INS capability to enforce adequately the laws pertaining to entry and residence." (INS: 1974 Annual Report, p. iii)

The INS is simply too understaffed to be able to detect every illegal entry. This Court has noted the failure of the border check point system for detection of illegal entries:

> "The entire system [check point system], however, has been notably unsuccessful in deterring or stemming this heavy flow. . . Perhaps the judiciary should not strain to commodate the requirements of the Fourth Amendment to the needs of a system which at best can demonstrate only minimal effectiveness. . . ." *U.S. v. Brignoni-Ponce*, ____ U.S. ____, 95 S.Ct. 2590, 2598 (1975) (White and Blackmun, J.J., concurring.)

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[13]Briggs, *supra*, n. 4, at 3 (emphasis in original).

[14]INS: 1974 Annual Report, p. 9.

Commissioner Chapman suggests that Mexican nationals comprise half of his own estimate of 6 to 8 million illegal aliens presently in the country.[15] Furthermore, all available evidence indicates that illegal aliens from Mexico come to the United States primarily to obtain employment.[16]

B. California

California's common border with Mexico and its extensive agrarian economy (which includes 81,000 square miles of farms in the San Joaquin Valley alone)[17] make the state a particular attraction for illegal entrants. In fact, Commissioner Chapman estimates that, presently, at least 1.5 million illegal aliens are residing in California. (Chapman Address)

California's recent economic history is replete with the insurgence of illegal entrants and their impact on the economy. In 1971, when 595,000 Californians were unemployed (7.4% of the state's labor force), there were between 200,000 and 300,000 illegal aliens

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[15]Address by Leonard F. Chapman, Jr., Commissioner, Immigration and Naturalization Service, before the Los Angeles World Affairs Council, Los Angeles, California, April 10, 1975 (hereinafter "Chapman Address").

[16]*See, e.g., Hearings, supra;* n. 6, pt. 4, p. 1119; *Review, supra*, n. 4, p. 5. In Fact, Congressman Leo J. Ryan observed that "the agricultural economy is based on the use of illegal aliens at a fairly low wage." "Illegal Aliens earn $10 Billion a Year, Investigator Says," *New York Times*, December 11, 1974.

[17]"Human Tide Cuts Deeply In America," *Washington Star-News*, November 16, 1974, p. A-8.

employed in California earning approximately $100 million in wages. (*Hearings, supra,* n.6, pt. 1, p. 208). A 1970 U.S. Department of Labor study estimated the annual wage drain attributable to illegal aliens in California agriculture to exceed $180 million. The study reflected that 67,437 illegal entrants were apprehended in California in fiscal 1970. (*Hearings, supra,* n.6, pt. 1, pp. 99-100). A 1973 report stated that the U.S. Border Patrol in California averaged over 11,000 arrests of illegal aliens each month. (*Washington Post*, December 9, 1973, p. 16). A more recent report stated that the border patrol had been apprehending 200 illegal aliens per day in Los Angeles and Orange Counties before funds were cut to the extent that only 75 to 100 per day could be apprehended; about 200,000 illegal aliens were caught in Southern California in 1974 and about 180,000 of them in the Los Angeles area; 32,000 illegal aliens are employed in San Francisco; 120,000 illegal aliens are believed to be working in California's central valley doing agricultural work.[18] Moreover, INS reports that Los Angeles has approximately 135,000 illegally-employed aliens.[19]

California Labor Code § 2805 is a limited labor statute which proscribes a specific employment activity. The underlying purpose of § 2805 is a state labor policy designed to protect California wage-earners. It seeks to curtail the influx of illegal entrants and their partial expropriation to California's labor market by establishing a statutory scheme to protect domestic

[18]"Rising Flood of Illegal Aliens," U.S. News & World Report, February 3, 1975, pp. 27-30.

[19]Congressional Digest, January, 1975, p. 8.

laborers.[20] Labor Code § 2805 is an incidental part of comprehensive California state labor legislation which regulates a variety of employer related activities. This includes the use of child labor, Labor Code §§ 1171-1204; standards related to wages, Labor Code §§ 200-277; and health and safety standards, Labor Code §§ 6300-6320, among others. The statute's approach, to impose criminal and civil sanctions on employers who knowingly employ illegal aliens, is a

[20]Other adverse effects of illegal aliens include the over-burdening of federal and state public assistance programs, as well as other benefit and service programs, including the public schools. In California the total additional expense for educating 659 illegal alien students in Orange County was 2.6 million dollars; San Diego County said its medical cost for the care of illegal aliens was $578,307 in 1974 and is expected to rise above $600,000 in 1975; two San Diego hospitals reported spending 1.9 million dollars last year between them on treatment of illegals ("Human Tide Cuts Deeply in America," *Washington Star-News,* November 16, 1974, p. A-8). Medical costs in Los Angeles County exceeded $8 million while in 1973, medical costs in 28 California counties for illegal aliens exceeded $11 million. (Chapman Address)

In his address, Commissioner Chapman pointed out that certain California Members of Congress had introduced a bill to require the federal government to absorb such medical costs. Chapman stated that the California sponsors claim that California spends more than $20 million annually in medical care for illegal aliens. Mr. Chapman's reference to the bill was not specific but petitioners note that on February 24, 1975, Mr. Sisk of California and others introduced H.R. 3609 into the 1st Session of the 94th Congress. H.R. 3609 would amend the Public Health Service Act to allow medical facilities, which treat aliens who are unlawfully in the U.S. and who cannot pay their bills or who can only pay part thereof, to apply to the Secretary of HEW for reimbursement of that portion of the cost which is unpaid if the facility is not eligible to recover the amount under any other public assistance program.

legitimate state response to protect the welfare of domestic labor[21] and focuses directly on the source of the problem, namely the hiring practice of local employers, a practice recognized to be injurious to the state's economic interests and the individual economic interests of a substantial segment of its labor force, the domestic farm laborer.

SUMMARY OF ARGUMENT

A. California Labor Code § 2805, which prohibits an employer from knowingly employing illegal aliens, is not preempted by federal law since there is no textual evidence in the Immigration and Nationality Act, 8 USC § § 1101 et seq., or its legislative history which supports a claim that it is "the clear and manifest purpose of Congress," *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146 (1963), to reject the aid of the states in controlling the flow of illegal aliens into the various states. Before a claim that Congress has "occupied" a subject area in its entirety so as to preempt *any* state action will be recognized, it must appear that "Congress has unmistakenly so ordained," *Id*., 142, and that the state law in question is "absolutely and totally contradictory and repugnant." *Goldstein v. California*, 412 U.S. 546, 553 (1973). None of these standards are met in this case.

B. For decades, where Congress has not clearly manifested an intent to "occupy" a particular subject

[21]The use of the term "domestic labor" in this brief is meant to include lawful resident alien labor as well.

of regulation, a state may legislate pursuant to its police power so long as such legislation does not conflict with and frustrate federal law. *Florida Lime and Avocado Growers, Inc. v. Paul, supra*, 141. If any conflict is found then State law is to be preempted " 'only to the extent necessary to protect the achievement of the aims of the' " federal law in question, *Merrill Lynch, Pierce, Fenner and Smith v. Ware*, 414 U.S. 117,127 (1973), since "the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one ousted.' " *Ibid.*

A principle purpose of the Immigration and Nationality Act (INA) is "to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market. . . ." Sen. Rpt. No. 748, 89th Cong., 1st Sess., p.10 (1965). This has been the historical purpose of immigration laws, *Karnuth v. United States*, 279 U.S. 231, 243 (1929), and it is expressly embodied in several provisions of the INA [§ § 101(a)(15)(H)(ii), 214 (a)(14), 271-80, 8 USC § § 1101(a)(15)(H)(ii), 1182(a)(14), 1321-30]. The purpose of Labor Code § 2805 is fully congruent with the purpose underlying such federal law.

Federal law other than the INA not only reveals a similar purpose but it also demonstrates a clear Congressional intent to encourage the states to employ such means as Labor Code § 2805 to protect local labor markets. In 1974, the Farm Labor Contractor Registration Act (FLCRA), 7 USC § § 2041-55, was amended to prohibit farm labor contractors from employing illegal aliens. Pub. Law 93-518, § § 7, 10. The act expressly

states that its provisions "are intended to supplement State action." 7 USC § 2051. Therefore, Labor Code § 2805 is clearly a valid exercise of California's police power, an exercise which will relieve its citizens of a substantial tax burden caused by the severe impact of illegal aliens upon its labor force and enhance the employment opportunities of significant component of that labor force.

ARGUMENT

I.

CALIFORNIA LABOR CODE § 2805, ENACTED TO PROTECT CALIFORNIA CITIZENS AND LAWFULLY RESIDENT WORKERS FROM UNEMPLOYMENT CAUSED BY COMPETITION FROM ILLEGAL ALIENS, IS A LEGITIMATE EXERCISE OF CALIFORNIA'S POLICE POWER.

A. The Parameters of the Preemption Doctrine.

When federal and state laws regulate in the same area, this Court has evolved two approaches in determining the question of the validity of the specific state law in question. The first approach, often called "occupation," renders the state attempt to regulate invalid *even though* it generally may be agreed that the state scheme does not impair but enhances and aids in the achievement of the federal goals. *See generally*, Note, *The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court*, 75 COLUM. L.

REV. 623, 625, 642-46 (1975). The second approach, often called "conflict," renders the state attempt invalid only if it conflicts with and impairs the federal scheme. *Id.*, at 626, 646-49. The Court below held that Labor Code § 2805 was preemptively invalid because it concluded that Congress "occupied" the field of immigration through its enactment of the Immigration and Nationality Act (8 U.S.C. § § 1101, *et seq.*). (A. Pet. Cert. 4a-6a). The Court erred.

It will be helpful to briefly summarize the nature of these two branches of this Court's preemption doctrine before specifically turning to the error of the Court below.

1. Occupation.

A judicial preemption decision based upon "occupation" should not be rendered lightly since one consequence may be to strike down state laws which *aid* a federal regulatory scheme. To reject help is far different than spurning that which hinders. For that reason, a Court must discern a congressional intention to occupy as "the clear and manifest purpose of Congress." *Florida Lime and Avocado Growers, Inc., v. Paul*, 373 U.S. 132, 146 (1963). As the Court has cautioned recently:

> "If Congress is authorized to act in a field, it should manifest its intention clearly. *It will not be presumed* that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. *The exercise of federal supremacy is not lightly to be presumed.*" [Citation omitted.] *New*

> *York Dept. of Soc. Services v. Dublino*, 413 U.S. 405, 413 (1973) (emphasis added).

In other words, to find an intent to preemptively occupy, it must be demonstrated from the text of the Act of Congress or its legislative history that "Congress has unmistakably so ordained." *Florida Lime and Avocado Growers, Inc. v. Paul, supra*, at 142. Without a very firm foundation based upon an explicit Congressional declaration, or readily apparent legislative history, talismanic invocation of phrases such as "comprehensive federal scheme" would mean "setting aside great numbers of state statutes to satisfy a Congressional purpose which would be only the product of this Court's imagination." *California v. Zook*, 336 U.S. 725, 732 (1949). Preemption by a finding of "occupation" is often disparaged:

> "Little aid can be derived from the vague and illusory but often repeated formula that Congress by 'occupying the field' has excluded from it all state legislation. . . . Every act of Congress occupies some field, but we must know the boundaries of that field before we can say that it has precluded a state from the exercise of any power reserved to it by the Constitution. To discover the boundaries we look to the federal statute itself, read in the light of its constitutional setting and its legislative history." *Hines v. Davidowitz*, 312 U.S. 52, 78-79 (1941).

Even when Congress acts pursuant to one of the specific powers expressed in the Constitution, such as the power to regulate copyrights, such exercise will be held to preempt state copyright law by occupation only when such a state law would be "absolutely and totally contradictory and repugnant." *Goldstein v. California*,

412 U.S. 546, 553 (1973). The *Goldstein* test for repugnancy is simple: federal power is exclusive over "matters which are *necessarily* national in impact." *Id.*, at 554 (emphasis in original). But, "necessarily national" matters are to be further analyzed to distinguish between those cases in which conflicts "may possibly arise," since such cases may permit state action, and those totally impermissible cases, where preemption is necessarily mandated, since conflicts "will necessarily" arise. *Id.*, at 554.

2. Conflict.

Historically, where Congress has not clearly manifested an intent to "occupy" a particular subject of regulation, a state may legislate pursuant to its police powers so long as such legislation does not conflict with and frustrate federal law.[22]

A determination of preemption on the basis of "conflict" is at bottom a determination that "turns on the peculiarities and special features of the federal regulatory scheme in question." *City of Burbank v.*

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[22] *Reid v. Colorado*, 187 U.S. 137 (1902) (prohibition on introduction of diseased cattle valid); *Savage v. Jones*, 225 U.S. 501 (1912) (state requirement that certain labels reveal package contents valid); *Carey v. South Dakota*, 250 U.S. 118 (1919) (state prohibition of shipment of wild ducks by common carrier valid); *Mintz v. Baldwin*, 289 U.S. 346 (1933) (inspection of cattle for infectious diseases not preempted); *Maurer v. Hamilton*, 309 U.S. 598 (1940) (state highway regulation not preempted); *Retail Clerk's Int. Assn. v. Schermerhorn*, 375 U.S. 96 (1963) (state labor legislation not preempted).

Lockheed Air Terminal, Inc., 411 U.S. 624, 638-39 (1973). "[P]rior cases on preemption 'are not precise guidelines'" for this reason. *Merrill Lynch, Pierce, Fenner and Smith, Inc. v. Ware*, 414 U.S. 117 (1973), quoting *City of Burbank v. Lockheed Air Terminal, Inc., supra.* But some guidelines can be derived from the "conflict" cases. First, "[c]onflicts, to merit judicial rather than cooperative federal-state resolution, should be of substance and not merely trivial or insubstantial." *New York State Department of Social Services v. Dublino, supra*, at 423, n. 29.

Second, when potential conflict appears, a detailed examination must be undertaken of the respective *purposes* of the federal law and the potentially conflicting state law. Such an inquiry is necessary since in this form of the preemption doctrine, state law will be preempted "'only to the extent necessary to protect the achievement of the aims of the'" federal law. *Merrill Lynch, Pierce, Fenner, and Smith v. Ware, supra*, at 127, quoting *Silver v. New York Stock Exchange*, 373 U.S. 341, 361 (1963). The Court's preference is always to sustain the state law to the extent that to do so does not run afoul of the pertinent federal purpose and, thereby, of the Supremacy Clause, Art. VI of the U.S. Constitution; that is the very essence of federalism. A finding of state impairment of federal purpose is the key since conflict exists only when "the state regulation 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Florida Lime and Avocado Growers, Inc. v. Paul, supra*, at 141, quoting *Hines v. Davidowitz, supra*, at 67.

Several commentators have suggested that the only proper method of preemption analysis lies in the

"conflict" approach because of the inherent pitfalls of the discernment of legislative intent in the "occupation" branch of the doctrine. *See e.g.*, Note, *Preemption As A Preferential Ground: A New Canon of Construction*, 12 STAN. L. REV. 208, 209-10 (1959); Hart & Sachs, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW, 97-102 (tent. ed. 1958).

The Stanford Law Review Note (at p. 209) observed that:

> By framing the preemption question is terms of specific congressional intent [citation omitted] the Supreme Court has manufactured difficulties for itself. Apart from the difficult problem of defining which Congress and which congressman's intent is relevant, [citation omitted] this manner of stating the issue suggests that the preemption question was consciously resolved and that only diligent effort is needed to reveal the intended solution.

The Note (at p. 210) then characterized the suggested analysis of the several other commentators as follows:

> [T]he proper approach is to determine whether the continued existence of the state law is consistent with the general purpose of the federal statute by seeking to define the evil Congress sought to remedy and the method chosen to effecuate its cure, . . . Most of the cases appear to have adopted this approach, although lip service is still paid to the specific intent inquiry.

3. Recent Preemption Decisions of this Court.

Recent decisions of this Court regarding problems of federal preemption have sought to balance state and

federal interests have apparently followed the comments set forth above. *Goldstein v. California*, 412 U.S. 546 (1973); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware*, 414 U.S. 117 (1973); *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974). *See generally*, Note, *The Preemption Doctrine: Shifting Perspectives on Federalism and The Burger Court*, 75 COLUM. L. REV. 623 (1975). This recent preemption trilogy has validated state laws in instances where provisions of state law and federal law may differ but where the purpose of the two schemes do not conflict. Moreover, the state law has been validated even where the subject matter regulated has implications beyond the state's boundaries.

Thus, in *Goldstein v. California*, 412 U.S. 546 (1973), the Court protected the state's right to prohibit the reproduction of phonograph records from misappropriated copies by narrowly construing the preemptive scope of the copyright clause, U.S. Const. Art. I, § 8, cl. 8. In affirming a conviction under a California statute making record piracy a criminal offense, the Court considered but rejected the constitutional claim that the copyright power, by its own force, notwithstanding the absence of any federal regulation of the matter, precluded concurrent state legislation, i.e., preempted by "occupation."

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware, 414 U.S. 117 (1973), involved a New York State Exchange rule enacted pursuant to the Securities Exchange Act, 15 U.S.C. § 78(f) (1970), requiring arbitration of claims involving employment termination and the employee's forfeiture of certain benefits, which conflicted with a California law which disregarded both

forfeiture and arbitration. In resolving the conflict, this Court studied the relationship between the purpose of the exchange rules and the purpose of the California law. State law conflicting with the federal law was to be preempted " 'only to the extent necessary to protect the achievement of the aims of the Securities Exchange Act.' " *Id.*, 127. The employee arbitration rule was held to be ancillary to the federal law's purpose of insuring fair dealing and of protecting investors, and thus did not preempt state law. *Id.*, 130, 134-136. The Court noted that its "analysis is to be tempered by the conviction that the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one ousted.' " *Id.*, 127, citing *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963). The Court further noted that "[t]his approach is supported by decisions extending back to the turn of the century." *Id.*, 127, n.8, citing cases.

Finally, in *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), the Court considered whether a state trade secret statute conflicted with the patent clause of the U.S. Const. Art. I., 8, cl. 8 even as applied to patentable inventions which would provide a monopoly in perpetuity rather than for 17 years under the federal patent law:

> "The question of whether the trade secret law of Ohio is void under the Supremacy Clause involves a consideration of whether that law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress. . . . Trade secret law and patent law have co-existed in this country for over one hundred years. *Each has its particular role to play, and the operation of one does not take away from the need for the other.*" *Id.*, 493 (emphasis added).

Relying on *Goldstein*, the *Kewanee* Court upheld the state trade secret statute after comparing its purpose, scope of application, and results as to various products and after finding no significant conflict between state law and federal patent policy.

The present case requires, in light of the present status of preemption law articulated in the recent trilogy, a review of federal legislation to determine: (1) is it "the clear and manifest purpose of Congress," *Florida Lime and Avocado Growers, Inc. v. Paul, supra,* at 146, to totally exclude the states from exercising their police power to diminish the impact of illegal aliens on their labor markets – that is, is such state legislation "absolutely and totally contradictory and repugnant," *Goldstein v. California, supra,* at 553, to federal law; (2) or, if some power is retained by the states in the face of a companion scheme of federal legislation, is there "such actual conflict between the two schemes of regulations that both cannot stand in the same area." *Florida Lime and Avocado Growers, Inc. v. Paul, supra,* at 141.

B. Congress Has Not Occupied The Field So As To Preempt Labor Code §2805.

While it is true that "[t]he National Government has 'broad constitutional powers in determining what aliens shall be admitted to the United States,' " *Graham v. Richardson,* 403 U.S. 365, 377 (1971), that fact does not, *in itself,* establish a Congressional intent to occupy the field in accordance with this Court's standards. *Graham*, like prior cases in which the supremacy of

federal law in the area of immigration was discussed, involved *legally* resident aliens who complained of contradictory or additional burdens imposed upon them by state laws. As the Court said,

> " 'State laws which impose discriminatory burdens upon the entrance or residence of aliens *lawfully within the United States,* conflict with [the] constitutionally derived federal power to regulate immigration, and have accordingly been held invalid.' " *Id.*, 378, quoting *Takahashi v. Fish and Game Comm. of Calif.*, 334 U.S. 410, 419 (1948) (emphasis added).

This case involves only *illegal* aliens.

Hines v. Davidowitz, 312 U.S. 52 (1941) is also inapposite. In *Hines,* this Court reviewed the validity of a Pennsylvania alien registration act the provisions of which conflicted in several particulars with the federal alien registration act. Davidowitz, an alien *legally* resident in Pennsylvania, challenged the state statute. One of his contentions was that federal power in this area was exclusive (i.e., the federal government had "occupied" the field). *Id.*, 61. The Court rejected the invitation to pass on this question saying that it was "expressly leaving open . . . the argument that the federal power in this field . . . is exclusive." *Id.*, 62. The Court proceeded, consistent with the Supremacy Clause of Article VI, upon the recognition "that whatever power a state may have [in this field] is subject to supreme national law." *Id.*, 68. Accordingly, the Court ruled that Pennsylvania's legislation was invalid because it conflicted with supervening federal law. ("Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Congress." *Id.*, 67.)

There is no doubt that immigration, and the standards regarding who shall be allowed entry and under what conditions, *is* one of those "matters which are *necessarily* national in impact." *Goldstein v. California, supra,* 154 (emphasis in original).[23] However, Labor Code § 2805 in no way impinges upon that federal power since it does not seek to regulate immigration; it regulates employment. It has an incidental *impact* on immigration. Therefore, as the Court said in *Goldstein*:

> "We must also be careful to distinguish those situations in which the concurrent exercise of power by the Federal Government and the States or by the States alone *may* possibly lead to conflicts and those situations where conflicts *will necessarily* arise. 'It is not . . . a mere possibility of inconvenience in the exercise of powers, but an immediate constitutional repugnancy that can by implication alienate and extinguish a pre-existing right of state sovereignty. THE FEDERALIST No. 32, p. 243, (B. Wright ed. 1961).'" *Id.*, 554-55 (emphasis in original).

As the following section will demonstrate in detail, Labor Code §2805 will neither possibly nor necessarily conflict with federal law.

It also does not appear that *mere* "knowing" or "willfull" employment of an illegal alien will subject an employer to prosecution for harboring. The statute

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[23]Since the problems caused by illegal aliens are particularly acute for those border states with high demand for agricultural labor, regulation of the employment of illegal aliens is *not* "necessarily national" in character. This Court has been particularly sensitive to the peculiarly acute needs of certain states when it has been confronted with a preemption claim. *See e.g., California v. Zook, supra,* at 735-36.

indicates that there must also be acts of concealment or shielding from detection as well before criminal liability attaches. While there has been no specific interpretation of the term "harbor" in § 274(a)(3), its predecessor, § 8 of the Immigration Act of February 5, 1917, 39 Stat. 874, contained the same term and it has received such an interpretation. *Susnjar v. United States,* 27 F.2d 223, 224 (6th Cir. 1928) ("we conceive the natural meaning of the word 'harbor' to be to clandestinely shelter, succor, and protect improperly admitted aliens. . . ."). *See also, United States v. Smith,* 112 F.2d 83, 85 (2d Cir., 1940); *United States v. Mack,* 112 F.2d 290, 291 (2d Cir. 1940); *Herrera v. United States,* 208 F.2d 215, 218 n. 4 (9th Cir., 1953), *cert. den.*, 347 U.S. 927 (1954).

Thus § 274(a)(3) demonstrates no more than Congressional silence regarding a prohibition of knowing employment of illegal aliens. It does not express a Congressional intent to preempt the states from enacting such a prohibition with the degree of specificity that this Court's decisions require for an expression of such intent, *supra,* pp. 19-21; furthermore, as the next section of this brief will demonstrate, Labor Code § 2805 does not conflict with § 274(a)(3), nor any other federal law but in fact furthers the achievement of the purposes of federal law.

C. Labor Code §2805 Furthers the Accomplishment of §274(a)(3) And Other Relevant Federal Law.

Section 274 prohibits the entry of aliens who have not been lawfully admitted into the United States. There are several other such sections (see § § 101, 214, 271-80, 8 U.S.C. § § 1101, 1184, 1321-30) all designed

to achieve the same end: the exclusion of persons not lawfully admitted into the United States. When an alien is not entitled *to be in* the United States, by definition, such alien is not entitled *to work* in the United States. When a state law such as Labor Code § 2805 prohibits the knowing employment of an illegal alien, the broader purposes of federal law, the exclusion of illegal aliens, is clearly furthered by such state legislation.

The exclusion of illegal aliens is not the ultimate purpose of federal law. The ultimate purpose is "to protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market. . . ." Sen. Rpt. No. 748, 89th Cong., 1st Sess., p. 10 (1965). To fulfill this purpose, the 1952 Act created an immigration system of "preferential admissions based upon the existence of a close family relationship with United States citizens or permanent resident aliens, *and upon the advantage to the United States of the special talents and skills of the* immigrant." *Ibid.* This recent immigration legislation, just as such earlier legislation, was enacted principally "to protect American labor against the influx of foreign labor." *Karnuth v. United States*, 279 U.S. 231, 243 (1929).

Under the INA, aliens are authorized to *temporarily* reside (and work) in the United States *only* "if unemployed persons capable of performing such service or labor cannot be found in this country." § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii). Aliens are authorized to *permanently* reside (and work) in the United States only if the Secretary of Labor certifies:

> "(A) That there are not sufficient workers in the United States who are able, willing, qualified and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and
>
> (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. . . ." § 212(a)(14), 8 U.S.C. § 1182(a)(14).[24]

In fact, state involvement in this certification procedure is built into the system since in each state it is the state employment agency that "determines availability of domestic workers and the standards of working conditions." Sen. Rpt. No. 748, *supra*, at 15. The intertwined nature of state and federal law is further exemplified by the fact that certification will be denied if the employer in question "has failed to abide by any applicable state or local labor, health or housing laws." 20 CFR § 602.10(e)(3). Similarly, certification will be denied:

> "Where the Immigration and Naturalization Service has notified the Secretary of Labor that the

[24] The regulations of California's Labor Commissioner interpreting Labor Code § 2805, 8 California Admin. Code § § 16209-16209.6, incorporate the same standards used by the Department of Labor in interpreting § 212(a)(14). The Labor Commissioner's regulations define the term, "lawful resident" in Labor Code § 2805 to include any non-citizen who possesses any document issued by the "immigration and Naturalization Service which authorizes him to work." 8 Cal. Admin. Code § 16209. If a prospective employee claims to be a citizen but does not possess documentation proving such status, he may sign a declaration to that effect and thus exonerate an otherwise innocent employer. 8 Cal. Admin. Code § 16209.3.

employer *has had in his employ any foreign worker* who was not lawfully in the United States, *unless* the employer demonstrates that he did not know, had no reasonable grounds to suspect, or could not by reasonable inquiry have ascertained that the alien workers was not lawfully in the U.S. . . ." 20 CFR § 602.10(e)(5) (emphasis added).

If it is assumed for the purposes of argument that the INA is equivocal regarding the preemption of legislation such as Labor Code § 2805, other federal law reveals both an intent to prohibit the employment of illegal aliens and an intent to include and encourage the involvement of the States to employ such means to protect local labor markets. The 93rd Congress amended the Farm Labor Contractor Registration Act of 1963, (FLCRA) § § 5 and 6, to prohibit farm labor contractors from knowingly employing illegal aliens. Pub. L. 93-518, § § 7.10, 88 Stat. 1655, 7 USC § § 2044(b)(6), 2045(f). Section 12, 7 USC § 2050(a), provides civil damage and injunctive remedies. Significantly, and particularly pertinent to the issue before this Court, the FLCRA explicitly authorizes Labor Code § 2805 or similar legislation. Section 15 of the Act, 7 USC § 2051 (§ 12 of the Act was redesignated § 15 by the 1974 amendments, Pub. L. 93-518, § 14) states that the provisions of the Act "are *intended to supplement State action* and [that] compliance with [it] shall not excuse anyone from compliance with appropriate State law and regulation." (Emphasis added.) Labor Code § 2805 is just such an "appropriate State law" because it prohibits employment of illegal aliens as do § § 5 and 6 of FLCRA, as amended. At a minimum, even if it could be successfully argued that

the INA preempts state legislative efforts to control employment of illegal aliens, the more recent expression of Congressional intent embodied in the FLCRA is clearly controlling simply because it is a more recent expression of intent.

In contrast to the INA, the purpose of Labor Code § 2805 is neither to establish an independent definition of the immigration status of aliens nor to impose any burdens upon persons lawfully admitted to the United States. The state statute does not define who may enter the United States or upon what terms, neither does it impose burdens on those who Congress has permitted to enter the country nor does it vary from the objectives of immigration law and policy. More accurately, Labor Code § 2805 takes federal law as written, applies it to remedy local labor problems and concurrently effectuates the legitimate interest of California in protecting its labor.

Of the three cases of the preemption trilogy, *Merrill Lynch, Pierce Fenner and Smith v. Ware, supra,* is most analogous to the instant case. If this Court scrutinizes § 2805 under the standard utilized in *Ware,* then § 274(a)(3), 8 USC § 1324(a)(3), could preempt § 2805 "only to the extent necessary to protect the achievement of the aims" of the federal legislation. *Id.,* at 127. Section 2805 does not conflict with, but effectuates the purpose of federal immigration law and therefore is not preempted. The focal point is that the state and federal laws, while distinctive in their approach, are harmonious in their objectives. An "analysis [of the two statutes] is to be tempered by the conviction that the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one ousted.' " *Id.,* 127.

The rule requiring the harmonizing of state statutes with federal legislation has even been applied to such traditional areas of federal law as the treaty making power clause of the U.S. Const., Art. I § 10. *Clark v. Allen*, 331 U.S. 503 (1947). In *Clark* the Court upheld a California statute which determined rights of non-resident aliens to inherit in California according to reciprocal inheritance rights accorded United States citizens. This Court held that since the statute had an incidental or indirect effect in foreign countries the statute would not be preempted. *Id.*, at 517.

CONCLUSION

Long-standing doctrine validates Labor Code § 2805. Measuring the California statute against the scheme of Congressional regulation of aliens makes it apparent that California's prohibition is not inconsistent with the purposes of Congress and does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Consideration of pertinent federal law repudiates any finding of conflict between Labor Code § 2805 and federal law. Not only does the state statute harmonize with and effectuate the broad purpose of the federal immigration and related labor laws, but the regulations of California's Labor Commissioner incorporate the same standards used by the Federal Government to determine when a foreign worker may be permitted to work in the United States. Moreover, federal law other than immigration law indicates a congressional desire to invite state assistance in controlling the influx of illegal aliens in the interests of the domestic labor force.

Thus, California Labor Code § 2805 does not infringe on congressional legislation in the area of immigration law; on the contrary, it furthers the purposes of federal legislation, and thus is not unconstitutional on grounds of preemption. For the foregoing reasons the judgment of the California Court of Appeal should be reversed.

Respectfully submitted,

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APPENDIX

1. U.S. Const. Art. I § 8, cl. 8:

Patents and Copyrights

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

2. U.S. Const. Art. I § 10, cl. 1:

Powers Prohibited, Absolutely

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

3. 7 U.S.C. § 2044(b)(6):

Refusal to Issue certificate suspension; revocation; refusal to renew

(b) Upon notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor if he finds that such contractor–

(6) has recruited, employed, or utilized, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment; . . .

4. 7 U.S.C. § 2045(f):

Every farm labor contractor shall–

"(f) refrain from recruiting, employing, or utilizing, with knowledge, the services of any

person, who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment; . . .

5. 7 U.S.C. § 2051:

This Chapter and the provisions contained herein are intended to supplement State action and compliance with this Chapter shall not excuse anyone from compliance with appropriate State law and regulation.

6. 8 U.S.C. § 1101(a)(15)(H):

15) The term "immigrant" means every alien except an alien who within one of the following classes of nonimmigrant aliens–

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as a trainee; and the aliens spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

7. 8 U.S.C. § 1182(a)(14):

§ 1182. Excludable aliens–General Classes

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or

unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a)(3) and 1153(a)(6) of this title, and to nonpreference immigrant aliens described in section 1153(a)(8) of this title; . . .

8. 8 U.S.C. § 1324(a)(3):

§ 1324. Bringing in and harboring certain aliens; persons liable; authority to arrest

(a) Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who–

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation. . .

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall

be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

9. 20 C.F.R. § 602.10(e):

Certification and Use of Temporary Foreign Labor for Agricultural, and Logging Employment
§ 602.10 The certification processes.

(e) Certifications will be denied in whole or in part if the findings set forth in paragraph (d) of this section cannot be made or:

(1) Where the employer has been found to have failed without good cause to comply with employment contracts with United States or foreign agricultural or logging workers;

(2) Where the admission of the foreign workers would result in violation of policies of the U.S. Department of Labor governing the referral of workers to jobs involved in strikes or other labor disputes (see § 602.2(b));

(3) Where the employer has failed to comply with any applicable requirements of the foreign government whose nationals are involved; or has failed to abide by any applicable State or local labor, health or housing laws;

* * * *

(5) Where the Immigration and Naturalization Service has notified the Secretary of Labor that the employer has had in his employ any foreign worker who was not lawfully in the United States, unless the employer demonstrates that he did not know, had no reasonable grounds to suspect, or

could not by reasonable inquiry have ascertained that the alien worker was not lawfully in the United States.

10. California Labor Code § 2805:

"(a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.

"(b) A person found guilty of violation of subdivision (a) is punishable by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00) for each offense.

"(c) The foregoing provisions shall not be a bar to civil action against the employer based upon violation of subdivision (a)."